



**FEDERAL ELECTION COMMISSION**  
WASHINGTON D C 20463

**FEB 07 2005**

**CERTIFIED MAIL**  
**RETURNED RECEIPT REQUESTED**

William C Oldaker, Esq  
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818 Connecticut Avenue, NW  
Suite 1100  
Washington, DC 20006

RE MUR 5517  
James R Stork  
Jim Stork for Congress and William C  
Oldaker, in his official capacity as treasurer  
Stork Investments, Inc /dba "Stork's Bakery"  
Stork's Las Olas, Inc

Dear Mr Oldaker

On August 26, 2004, the Federal Election Commission notified your clients, Mr James R Stork, Jim Stork for Congress and you in your official capacity as treasurer (the "Committee"), Stork's Investments, Inc /dba "Stork's Bakery," and Stork's Las Olas, Inc, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") Copies of the complaint were forwarded to your clients at that time

Upon further review of the allegations contained in the complaint and information provided by your clients, the Commission on February 3, 2005 found that there is reason to believe that James R Stork, Stork Investments, Inc /dba "Stork's Bakery," Stork's Las Olas Inc, and the Committee violated 2 U S C § 441b, and that the Committee also violated 2 U S C § 434 At the same time, the Commission also found that there is no reason to believe that the Committee violated 2 U S C § 441d in connection with its Internet website disclaimer The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter to the General Counsel's Office within 15 days of receipt of this letter Where appropriate, statements should be submitted under oath In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U S C §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Ruth Henlzer, the attorney assigned to this matter, at (202) 694-1598.

Sincerely,



Scott E. Thomas  
Chairman

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

6 **RESPONDENTS:** James R. Stork  
7 Jim Stork for Congress and William C. Oldaker, in his official capacity  
8 as treasurer  
9 Stork Investments, Inc /dba "Stork's Bakery"  
10 Stork's Las Olas, Inc  
11

12 **MUR:** 5517

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14 **I INTRODUCTION**

15 This case was generated by a complaint filed with the Federal Election Commission  
16 ("Commission") by Shari L. McCartney See 2 U S C § 437g(a)(1)

17 James R. Stork, a 2004 candidate for Congress in Florida's 22<sup>nd</sup> congressional district,  
18 owns Stork Investments, Inc /dba "Stork's Bakery" and Stork's Las Olas, Inc ("Stork's  
19 bakeries")<sup>1</sup> Complainant alleges that Stork's bakeries ran coordinated television advertisements  
20 featuring Stork and targeting voters in Florida's 22<sup>nd</sup> congressional district within 120 days of the  
21 November 2, 2004 general election,<sup>2</sup> and that Stork's bakeries made illegal corporate in-kind  
22 contributions to the Jim Stork for Congress Committee (the "Committee") in the form of food,  
23 rent, and office expenses

24  
<sup>1</sup> Corporate documents for Stork Investments, Inc list Stork as "president," corporate documents for Stork's Las Olas, Inc list Stork as an "officer/director "

<sup>2</sup> Videotapes of the advertisements (the "Pie" and "Coffee" advertisements) were submitted with the complaint and provided to the respondents

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Stork's Bakery and Stork's Las Olas, Inc. Appear to Have Run At Least Two Television Advertisements that were "Coordinated Communications" under 11 C.F.R. § 109.21.**

Under the Federal Election Campaign Act of 1971, as amended (the "Act"), corporations may not make contributions "in connection with" a federal election and corporate officers may not consent to such contributions. 2 U.S.C. § 441b(a). Moreover, federal candidates and political committees may not knowingly accept or receive such contributions. *Id.* A contribution includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). The term "anything of value" includes in-kind contributions. 11 C.F.R. § 100.52(d)(1).

The Act defines in-kind contributions as, *inter alia*, expenditures made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents." 2 U.S.C. § 441a(a)(7)(B). Following the enactment of the Bipartisan Campaign Reform Act of 2002, the Commission promulgated a new "coordinated communication" regulation at 11 C.F.R. § 109.21, which implements section 441a(a)(7)(B) through a three-pronged test: (1) the communication must be paid for by a person other than a Federal candidate, a candidate's authorized committee, or political party committee, or any agent of any of the foregoing, (2) one or more of the six "conduct standards" set forth in 11 C.F.R. § 109.21(d) must be satisfied, and (3) one or more of the four "content standards" set forth in 11 C.F.R. § 109.21(c) must be satisfied.

**1. The "Pie" and "Coffee" Advertisements Meet the First Prong of the Coordination Test at 11 C.F.R. § 109.21.**

The Stork bakeries do not deny paying for the production and airing of the television advertisements. See Response at 2. Thus, the advertisements meet the first prong of the coordination test at 11 C.F.R. § 109.21(a)(1) (communications paid for by a person other than the candidate or candidate's committee).

**2. The "Pie" and "Coffee" Advertisements Appear to Meet the Content Requirement of 11 C.F.R. § 109.21(c).**

The goal of the content standard is to establish a bright line test that requires "as little characterization of the meaning or the content of communication, or inquiry into the subjective effect of the communication on the reader, viewer, or listener as possible." Explanation & Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 430 (Jan. 3, 2003) ("Coordination E&J"). Thus, under 11 C.F.R. § 109.21(c), a communication satisfies the content standard if it (1) is an electioneering communication, (2) disseminates or republishes campaign materials, (3) expressly advocates the election or defeat of a clearly identified candidate, or (4) is a public communication that (i) refers to a political party or clearly identified candidate for Federal Office, (ii) is disseminated within 120 days of an election, and (iii) is targeted to voters in the jurisdiction of the clearly identified candidate.

As a threshold matter, the advertisements appear to be public communications. Respondents acknowledge that "[t]he advertising [campaign] included three weeks of cable ads." Response at 2. Thus, these advertisements meet the definition of "public communications" because they were disseminated "by means of any broadcast, cable, or satellite communication."

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1 11 C F R § 100 26 Next, Stork, who appears in the "Pie" and "Coffee" advertisements and  
2 identifies himself by name, is "clearly identified," pursuant to 11 C F R § 109 21(c)(4)(i) The  
3 definition of "clearly identified candidate" includes, *inter alia*, the name or photograph of the  
4 candidate See 11 C F R § 100 17 Thus, this element is satisfied because the person running for  
5 office appears in the communication

6 Additionally, respondents acknowledge that the cable advertising campaign ran from June  
7 29, 2004 through July 18, 2004, and did not dispute that the advertisements, which were included  
8 with the complaint, were run during that time period Therefore, it appears that the  
9 advertisements in issue ran after July 4, 2004, which was 120 days before the November 2, 2004  
10 general election, all of them ran after April 29, 2004, which was 120 days before Stork's August  
11 31, 2004 primary election<sup>3</sup> The timing of these advertisements satisfies the bright-line test set  
12 forth in 11 C F R § 109 21(c)(4)(ii)

13 Finally, the bakery advertisements were directed to voters in Florida's 22<sup>nd</sup> congressional  
14 district within the meaning of 11 C F R § 109 21(c)(4)(iii) Although respondents assert that the  
15 advertisements were aired in "key [bakery] markets, including parts of at least four  
16 Congressional districts," they acknowledge that the advertising campaign included the Boca  
17 Raton area, which is within Florida's 22<sup>nd</sup> congressional district but is approximately 20 miles or  
18 more from Stork's Las Olas According to respondents, "It is well known among merchants that  
19 a Las Olas business cannot survive without the Boca Raton market, one of the largest in the area"  
20 and the advertising campaign did not "reference[], allude[] to, or suggest[], in any way

<sup>3</sup> According to the Committee's website, [www.StorkforCongress.com](http://www.StorkforCongress.com), Stork, who had been running as a non-incumbent in Florida's 22<sup>nd</sup> congressional district, announced on September 17, 2004 that he had suspended campaigning "a few weeks earlier" due to a heart-related condition Stork later withdrew from the general election

whatsoever, the campaign of Jim Stork      The advertisements merely introduced the bakery's products, as they have done in the past " Response at 2 Nonetheless, even assuming that respondents had valid business justifications for their advertising strategy, the advertisements were "directed to" voters in Florida's 22<sup>nd</sup> congressional district See Advisory Opinion 2004-29 (when candidate's congressional district represented a relatively significant portion of all intended voters, the communication was "directed to" voters in the district), *see also* Coordination E&J at 431 ("The 'directed to voters' requirement focuses on the intended audience of the communication, rather than a quantitative analysis of the number of possible recipients, or the expected geographic limits of a particular media ")

Thus, because the Stork bakeries aired the "Pie" and "Coffee" advertisements, which clearly identify Stork, in Florida's 22<sup>nd</sup> congressional district within 120 days of the primary and general elections, the "content" element of section 109 21 appears to be satisfied

**3. The "Pie" and "Coffee" Advertisements Appear to Meet the Conduct Requirement of 11 C.F.R. § 109.21(d).**

Communications that meet the conduct standards of section 109 21(d) include those made at the request or suggestion, or with the material involvement, of a candidate or his or her agents Given that Stork appeared in the advertisements in question, the "material involvement" standard applies here 11 C F R § 109 21(d)(2) See Advisory Opinions 2004-1 and 2003-25 (Commission stated that a candidate's appearance in a communication would be sufficient to conclude that the candidate was materially involved in decisions regarding that communication) Stork's appearance in the "Pie" and "Coffee" advertisements, therefore, is sufficient to meet the conduct standard

**B. In-Kind Contributions**

In addition, complainant alleges that Stork's bakeries provided the Committee with \$14,591 86 in illegal in-kind corporate contributions for food, rent, and office expenses, and attached to the complaint a list of in-kind contributions which were apparently drawn from FEC disclosure reports. In fact, the reports list Stork as the contributor, not the bakeries. In addition, upon reviewing the Committee's disclosure reports, it appears that, subsequent to the complaint, the Committee reported an additional \$2,020 58 in-kind contribution from Stork dated May 5, 2004, on its revised July Quarterly Report, for "in-kind catering for NYC Reception"<sup>4</sup>

The Commission's regulations define "anything of value" to include all in-kind contributions, including the provision of goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services. 11 C.F.R. § 100.52(d)(1). For purposes of section 100.52(d)(1), the "usual and normal charge for goods" means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 C.F.R. § 100.52(d)(2). The provision of any goods or services without charge or at a price less than the usual and normal charge for such goods or services is an in-kind contribution. *Id.*

Because the Committee reported the contributions alluded to by complainant with Stork listed as the contributor and "Stork's Bakery/Owner" as Stork's place of employment, it is possible that Stork himself paid for the in-kind contributions from his own funds. That is

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<sup>4</sup> Using the list provided by complainant, it appears that there is a total of \$10,592 22, not \$14 591 86, in in-kind contributions. The amount of violative contributions could be as much as \$12,612 80 (\$10,592 22 plus \$2,020 58).

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permissible under the Act See 11 C F R § 110.10 (except as provided by regulations pertaining to the public funding of presidential elections, candidates may make unlimited expenditures from personal funds), *see also Buckley v Valeo*, 424 U S 1, 54 (1976) (holding restrictions on candidates' expenditures from personal funds unconstitutional) In their answer, respondents claim that the campaign "paid for all products purchased from the bakery" and provide copies of campaign checks totaling \$3,334.34, which FEC reports list as disbursements to Stork's Bakery. However, respondents fail to specifically address complainant's allegations that the in-kind contributions that are listed in the attachment to the complaint were illegal corporate contributions.

Therefore, there is reason to believe that Stork Investments, Inc., dba "Stork's Bakery" and Stork's Las Olas, Inc. violated 2 U S C § 441b by making prohibited in-kind corporate contributions to Jim Stork for Congress and William C. Oldaker, in his official capacity as treasurer, Jim Stork for Congress and William C. Oldaker, in his official capacity as treasurer, violated 2 U S C § 441b by knowingly accepting prohibited in-kind corporate contributions from Stork Investments, Inc., dba "Stork's Bakery" and Stork's Las Olas, Inc., and James R. Stork violated 2 U S C § 441b by consenting to the making of prohibited corporate contributions as an officer of the Stork bakeries and by knowingly accepting such contributions as a candidate

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